

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 DENNIS DERISE CORBRAY,

11 Plaintiff,

12 v.

13 GERALD A. HORNE, *et al.*,

14 Defendants.

CASE NO. C23-5841-JCC

ORDER

15 Plaintiff filed a civil rights complaint with this Court asking for 42 U.S.C. § 1983 relief.  
16 (See Dkt. No. 4.) However, because he is a prisoner seeking redress from a governmental entity  
17 or officer, the Court must dismiss the complaint prior to service if it fails to state a claim upon  
18 which relief may be granted. 28 U.S.C. §§ 1915A(a)–(b)(1). The Honorable Judge David W.  
19 Christel, United States Magistrate Judge, issued a Report and Recommendation (“R&R”) that  
20 this Court do just that. (See Dkt. No. 6) Plaintiff objects. (See Dkt. No. 7.)

21 A district court reviews *de novo* those portions of a magistrate judge’s R&R to which a  
22 party properly objects. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). In turning to the  
23 complaint, Plaintiff alleges that former Pierce County Prosecutor Gerald Horne, and his former  
24 employer, Pierce County Prosecuting Attorney’s Office, violated his civil rights. (See Dkt. No. 4  
25 at 4–7.) According to Plaintiff, they did so when a second prosecutor (a subordinate to Mr.  
26 Horne) signed a probable cause document omitting information relevant to the offense for which

1 Plaintiff is ultimately now serving a term of custody. (*Id.*) Plaintiff contends that Mr. Horne, by  
 2 granting this subordinate permission to sign the document, infringed on Plaintiff's civil rights.  
 3 (*Id.*)

4 According to the R&R, the recommended disposition here turns on the fact that the  
 5 named Defendants, Mr. Horne and the Pierce County Prosecuting Attorney's Office, enjoy  
 6 absolute immunity. (Dkt. No. 6 at 3.) Plaintiff, in objecting, argues that the subordinate  
 7 prosecutor at issue, and by extension Mr. Horne and the Pierce County Prosecutor's office, are  
 8 not afforded such immunity. (Dkt. No. 7 at 2–3.) Indeed, while a prosecutor enjoys absolute  
 9 immunity from suit when acting pursuant to their role as an advocate, this immunity falls away  
 10 when performing other functions, such as that of a complaining witness. *See Kalina v. Fletcher*,  
 11 522 U.S. 116, 131 (1997). And here, the Court agrees that, based on Plaintiff's allegations,  
 12 absolutely immunity would not necessarily apply. (Dkt. No. 7 at 3.) But this is not the end of the  
 13 analysis. Plaintiff contends that when a prosecutor signs a probable cause certificate, by  
 14 definition, this infringes on a defendant's rights. (*See* Dkt. No. 1 at 5.) No more allegations are  
 15 needed to support this contention. The Court disagrees.

16 There is a difference between an imperfect defense and conduct which, if proven to be  
 17 true, violates someone's rights. Because Defendants still enjoy *qualified* immunity, Plaintiff not  
 18 only needs to show how they violated his rights, but that those rights are of a "clearly established  
 19 statutory or constitutional [magnitude] of which a reasonable person would have known."  
 20 *Mitchell v. Forsyth*, 472 U.S. 511, 524 (1985). And neither Plaintiff's complaint nor his  
 21 objection to the R&R make this showing. (*See* Dkt. Nos. 1 at 4–5, 7 at 1–6.)

22 Moreover, Plaintiff's allegations focus primarily on the subordinate's conduct. (*See*  
 23 *generally* Dkt. No. 7.) But to state a § 1983 claim, a plaintiff must allege facts to show how a  
 24 *named* defendant caused the harm alleged in the complaint. *See Leer v. Murphy*, 844 F.2d 628,  
 25 633 (9th Cir. 1988). While Plaintiff contends that Defendant Horne failed to supervise the  
 26 subordinate, this is a legal conclusion lacking in factual support. It alone is insufficient to state a

1 plausible claim for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). And none of  
2 Plaintiff's allegations, at least on the surface, suggest that the subordinate violated a clearly  
3 established right (nor does Plaintiff provide citation suggesting that it does). *See Foster v. Dept.*  
4 *of Lab. and Industries*, 2020 WL 4193179, slip op. at 5 (W.D. Wash. 2020) ("[w]hen [the  
5 qualified immunity] test is properly applied, it protects all but the plainly incompetent or those  
6 who knowingly violate the law.") (internal citation omitted).

7 For the foregoing reasons the Court ADOPTS the R&R (Dkt. No. 6), DENIES the  
8 objections (Dkt. No. 7) and DISMISSES the complaint (Dkt. No. 4) with prejudice and without  
9 leave to amend.<sup>1</sup> Because this case is being dismissed for failure to state a claim, it shall count as  
10 a "strike" under 28 U.S.C. § 1915(g). Finally, based on this disposition, Plaintiff's request for  
11 appointment of counsel is moot. (Dkt. No. 7 at 4–5.)

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13 DATED this 7th day of December 2023.



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16 John C. Coughenour  
17 UNITED STATES DISTRICT JUDGE  
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22 <sup>1</sup> A *pro se* litigant need not be granted leave to amend if it "is absolutely clear that no  
23 amendment can cure the defect." *Lucas v. Department of Corrections*, 66 F.3d 245, 248 (9th Cir.  
24 1995). Here, the nexus between the alleged acts and asserted legal claim is too tenuous for a  
colorable claim to arise following amendment.

25 Moreover, the Court notes that Plaintiff is currently pursuing a similar claim against the  
26 subordinate prosecutor referenced above. *See Corbray v. Robnett, et al.*, Case No. C23-5725-  
JCC-TLF (W.D. Wash. 2023). Accordingly, the claims asserted in this complaint are largely  
duplicative.